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APPLICATION NO	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO	CONFIRMATION NO
09 441,318	11 16 1999	PATRICIA L. CONKLIN	BTI-41	4166

20808 7590 04 18 2002

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EXAMINER

KUBELIK, ANNE R

ART UNIT	PAPER NUMBER
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1638

DATE MAILED: 04/18/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/441,318

Applicant(s)

CONKLIN ET AL.

Examiner

Anne R. Kubelik

Art Unit

1638

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 April 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.  
2. ☐ The proposed amendment(s) will not be entered because:  
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ they raise the issue of new matter (see Note below);  
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☒ Applicant's reply has overcome the following rejection(s): See Continuation Sheet.  
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.  
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1-26

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.  
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.  
10. ☐ Other: \_\_\_\_\_

Continuation of 3. Applicant's reply has overcome the following rejection(s): 112, 2nd, over claim 20; 112, 1st, new matter, over claims 1-22 and 24-26; 102(a) over Bauw et al..

Continuation of 5. does NOT place the application in condition for allowance because: The specification fails to teach PLANT genes encoding phosphoglucose isomerase, phosphomannomutase, GDP-mannose pyrophosphorylase and GDP-D-mannose-3,5-epimerase, including the full length Arabidopsis GDP-mannose pyrophosphorylase gene; thus 112, 1st enablement and written description requirements are not met. Disclosure of a list of enzymes in a pathway does not enable or provide written description for the nucleic acids that encode those enzymes. With respect to Applicant's arguments about "wild-type plants" the enablement rejection is based on transformation of wild-type plants not being taught, not based on the plants being wild-type after transformation (and wild-type plants, because all that has been done is the transformation of vtc-1 mutants, is essentially all that Applicant has taught). The enablement rejection is not over the ability Applicant to complement a mutant, but to produce plants that have higher levels of Vitamin C; this encompasses more than complementation of a mutant plant.

DAVID T. FOX  
PRIMARY EXAMINER  
GROUP 180-1638

*David T. Fox*